

**U.S. Department of Labor**

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**Issue Date: 27 November 2002**

CASE NO.: 2002-CAA-00021

In the Matter of

**RAMACHANDRAN SEETHARAMAN**

Complainant

v.

**GENERAL ELECTRIC COMPANY,  
PACIFIC GAS AND ELECTRIC COMPANY,  
EXELON CORPORATION,  
MITSUBISHI POWER SYSTEMS,  
MASSACHUSETTS WATER RESOURCES AUTHORITY,  
NEBRASKA BOILER COMPANY, and  
ENGLISH BOILER AND TUBE, INC.**

Respondents

**RECOMMENDED DECISION AND ORDER GRANTING  
MOTIONS FOR SUMMARY DECISION**

This case arises under the employee protection provisions of the Clean Air Act ( the "CAA"), 42 U.S.C. §7622, the Comprehensive Environmental Recovery, Compensation and Liability Act (the "CERCLA"), 42 U.S.C. §9610, the Federal Water Pollution Control Act (the "FWPCA"), 33 U.S.C. §1367, the Solid Waste Disposal Act (the "SWDA"), 42 U.S.C. §6971, the Toxic Substance Control Act (the "TSCA"), 15 U.S.C. §2622, the Energy Reorganization Act of 1974 (the "ERA"), 42 U.S.C. § 5851, and the regulations promulgated thereunder at 29 C.F.R. Part 24. The matter is before me on motions for summary decision filed by each of the Respondents, General Electric Company ("GE"), Pacific Gas and Electric Company/ National Energy Group ("PG&E"), Exelon Corporation ("Exelon"), Mitsubishi Power Systems ("Mitsubishi"), Massachusetts Water Resources Authority ("MWRA"), Nebraska Boiler Company ("Nebraska Boiler"), and English Boiler and Tube, Inc. ("English Boiler"). Upon consideration of the matter, I have concluded for the reasons set forth below that there is no genuine issue as to any material fact and that the Respondents are entitled to summary decision.

## I. Background

On May 24, 2002, Ramachandran Seetharaman (the “Complainant”) filed a complaint with the U.S. Department of Labor Occupational Safety and Health Administration (“OSHA”), alleging that the Respondents had violated the employee protection provisions of the CAA, CERCLA, FWPCA, SWDA, TSCA, and the ERA by conspiring and retaliating against the Complainant in the termination of his employment from Stone & Webster, Inc. (“Stone & Webster”) on May 2, 2002. By letter dated June 10, 2002, OSHA dismissed the complaints against the named Respondents on the basis that the Complainant had failed to establish a *prima facie* case of discrimination. OSHA Determination Letter at 1. OSHA determined that it could not “make an inference of a connection between any claimed adverse actions and any protected activity in which Mr. Seetharaman may have engaged under any of the EPA related acts.” *Id.* OSHA further determined that a related complaint against the Complainant’s employer, Stone & Webster, would remain under investigation. *Id.*<sup>1</sup>

The Complainant timely appealed the dismissal of his complaints against the Respondents, and the matter was referred to the Office of Administrative Law Judges. On June 20, 2002, a Notice of Hearing and Pre-Hearing Order was issued pursuant to the expedited hearing requirements contained in the employee protection provisions, 29 C.F.R. §24.6, scheduling this matter to be heard on July 17, 2002 in Boston, Massachusetts. However, on July 12, 2002, I issued an Order postponing the hearing and scheduling a pre-hearing conference in its place based on my determination that the matter was not in a posture to proceed to a full hearing at the time in view of substantial confusion among the parties as to the status of the case, the issues involved in the matter, and even the identity of the parties involved. The Complainant appeared *pro se* at the pre-hearing conference on July 17, 2002, and appearances were made by counsel on behalf of the Respondents GE, PG&E, Exelon, Mitsubishi, and MWRA.<sup>2</sup> At the conference, each of the Respondents appearing stated its intention to move for summary decision. I granted the Respondents fourteen (14) days in which to file any motions and memoranda of law. In consideration of the Complainant’s *pro se* status, I granted him thirty (30) days in which to respond to the Respondents’ motions, and I also granted him leave to request additional time if necessary. These rulings were confirmed in an Order issued on July 17, 2002. The Respondents timely filed their motions, and by letter dated August 18, 2002, the Complainant requested and was granted an extension of time within which to respond. The Complainant timely filed his responses, and the matter is now ready for decision.

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<sup>1</sup> OSHA subsequently dismissed the complaint against Stone & Webster, and the Complainant’s appeal and request for hearing was separately docketed in OALJ Case No. 2003-CAA-00004. That matter is also pending before me on Stone & Webster’s motion for summary decision.

<sup>2</sup> Nebraska Boiler and English Boiler did not attend the pre-hearing conference. Subsequent to the conference, appearances were entered by counsel for both parties.

## II. Motions for Summary Decision

### A. General Electric

GE argues that the Complainant has failed to establish a *prima facie* case of discrimination in that he has not alleged that GE took any adverse employment action against him. GE Motion to Dismiss at 3. GE represents that its relationship with Stone & Webster is that of a vendor which has supplied equipment to certain power plants. *Id.* at 2. In that capacity, GE asserts that they are not an agent of Stone & Webster, and it denies that it had an employment relationship with Complainant or any control or influence over the terms and conditions of his employment with Stone & Webster. *Id.* Since Complainant has failed to allege any facts substantiating that GE took any adverse employment action against him, GE requests that the matter be dismissed for failure to state a claim. *Id.* at 4.

### B. Pacific Gas & Electric

In its motion, with supporting affidavit, PG&E contends that the Complainant has failed to establish a *prima facie* case of discrimination. PG&E Motion to Dismiss at 3. PG&E asserts that the employee protection provisions require that the individual asserting retaliation be an employee of the respondent in order to establish jurisdiction over the matter. *Id.* PG&E asserts that the Complainant has not alleged that he was an employee of PG&E under a direct common law employment relationship, a joint employment relationship, or an employment relationship based on actions taken by PG&E to interfere with the Complainant's employment. *Id.* PG&E further argues that the Complainant has failed to make a *prima facie* showing that PG&E discriminated against him because he has not established that PG&E took any adverse employment action against him. *Id.* at 7. It avers that it has no control over internal employment decisions at Stone & Webster and that it did not ask, direct or otherwise cause Stone & Webster to terminate Complainant's employment. *Id.* at 8. Accordingly, PG&E argues that the complaint against it should be dismissed for failure to state a claim since the Complainant has failed to allege any facts substantiating that PG&E took any adverse employment action against him. *Id.*

### C. Exelon

Exelon similarly moves for summary decision, arguing that the Complainant has failed to establish a *prima facie* case of discrimination in that he has not alleged that Exelon took any adverse action against him in regard to the terms or conditions of his employment. Exelon Motion to Dismiss at 4. Exelon asserts that the Complainant merely alleges that Exelon is a "client" or "agent" of the party he accuses of discrimination, Stone & Webster. *Id.* at 7. Exelon argues that the Complainant has failed to state any facts or acts taken by Exelon to discriminate against Complainant. *Id.* Rather, it states that the Complainant relies on a theory of guilt by association in that Exelon has alleged business relationships with his employer, Stone & Webster. *Id.* at 10.

Exelon represents that the only other allegations made by the Complainant against it concern a blacklisting claim based on Complainant's employment by Exelon's predecessor entity, Commonwealth Edison Company ("ComEd"), over a decade prior to the filing of the present complaint. *Id.* at 7. Exelon maintains that the environmental statutes at issue require any complaint concerning retaliation for whistleblowing to be filed within 30 days of the alleged adverse action. *Id.* Accordingly, Exelon argues that the Complainant's allegations of blacklisting, even if supported by factual allegations, would fall outside the applicable statute of limitations. *Id.* at 9. Moreover, Exelon asserts that the Complainant has presented no evidence and has alleged no facts with which to establish a *prima facie* case of blacklisting. *Id.* at 10. In sum, Exelon argues that since the Complainant has failed to allege any facts substantiating that Exelon took any adverse employment action against him, his complaint must be dismissed for failure to state a claim. *Id.*

#### D. MWRA

MWRA asserts that the Complainant has failed to establish a *prima facie* case of discrimination in that he has not alleged that MWRA took any adverse action against the Complainant. MWRA Motion to Dismiss at 9. MWRA states that the Complainant's only allegation against it concerns an employment verification that was initiated by Stone & Webster on May 17, 2001. *Id.* MWRA contends that its act of notifying Stone & Webster of the Complainant's eligibility for rehire cannot be construed as an adverse action, considering that the Complainant was thereafter hired and that his termination did not take place until one year after the alleged contact. *Id.* MWRA argues that the Complainant has failed to allege any facts to substantiate that MWRA took any adverse employment action against the Complainant. *Id.* at 10.

In the alternative, MWRA asserts that a settlement agreement which it entered into with the Complainant on September 26, 2001 in another discrimination claim incorporates a full release by the Complainant for all causes of action that accrued prior to its execution. *Id.* at 6. Since the employment verification took place more than three months prior to the signing of the settlement agreement, MWRA argues that the release covers Complainant's present allegation. *Id.* at 7. Moreover, MWRA argues that the Complainant's claim, even if supported by factual allegations, would fall outside of the applicable statute of limitations since the Complainant's allegations against MWRA concern an occurrence in May of 2001, and his complaint was filed a year later in May of 2002. *Id.* at 10.

MWRA thus submits that since the Complainant has failed to allege any facts substantiating that MWRA took any adverse employment action against him, his complaint should be dismissed for failure to state a claim. *Id.* at 11.

#### E. Mitsubishi

Mitsubishi asserts in its motion, supported by two affidavits, that the Complainant has failed to establish a *prima facie* case of discrimination in that he has not alleged that Mitsubishi took any adverse employment action against him. Mitsubishi Motion to Dismiss at 3. Mitsubishi represents that its relationship with Stone & Webster is that of a subcontractor which has supplied gas turbines, steam turbines and generators to power plants. *Id.* In that capacity, Mitsubishi asserts that it is not an agent of Stone & Webster, and that it had neither an employment relationship with Complainant nor any control over or effect on the terms and conditions of his employment with Stone & Webster. *Id.* Mitsubishi argues that since Complainant has failed to allege any facts substantiating that Mitsubishi took any adverse employment action against him, the complaint should be dismissed for failure to state a claim. *Id.* at 5.

#### F. Nebraska Boiler

Nebraska Boiler alleges in its motion, with supporting affidavit, that the Complainant has failed to establish a *prima facie* case of discrimination because he does not allege that he was ever an employee of Nebraska Boiler or that Nebraska Boiler had any control over or effect on the terms and conditions of his employment with Stone & Webster. Nebraska Boiler Motion to Dismiss at 6. Nebraska Boiler asserts that the only known connection, with respect to the Complainant's allegations, is limited to its bidding in an on-line auction for a contract to manufacture steam generation boilers for certain power plants over the next five to seven years. *Id.* at 2. Nebraska Boiler asserts that there is no corporate relationship between itself and Stone & Webster other than an arms-length business transaction wherein it supplied a boiler to Stone & Webster for use at its Covert Project construction sites. *Id.* at 3. Nebraska Boiler contends that the Complainant has failed to state any facts or acts taken by Nebraska Boiler to discriminate against him. *Id.* at 8. Accordingly, Nebraska Boiler argues that since Complainant has failed to allege any facts substantiating that Nebraska Boiler took any adverse employment action against him, his complaint should be dismissed for failure to state a claim. *Id.*

#### G. English Boiler

In its motion, with supporting affidavit, English Boiler argues that the Complainant has failed to establish a *prima facie* case of discrimination. English Boiler Motion to Dismiss at 3. English Boiler asserts that its involvement with respect to the Complainant's allegations is limited to its bidding in an on-line auction for a contract to manufacture boilers for certain power plants over the next five to seven years. *Id.* at 2. English Boiler denies ever performing any work for Stone & Webster, and it states that Stone & Webster did not accept its bid for the boiler work and, in fact, terminated English Boiler's bidding on the job before the contract was awarded. *Id.* English Boiler argues that Complainant has alleged no facts to establish that it was ever his employer, that it terminated or discriminated against him, that it caused him to be terminated, or that it engaged in any acts with regard to his employment with Stone & Webster. *Id.* at 4-5. In addition, English Boiler asserts that the Complainant has not alleged that it knew of his protected

activities or that it took any adverse personnel action against him. *Id.* at 5. English Boiler thus moves to dismiss on the ground that the Complainant has failed to allege any facts substantiating that it took any adverse employment action against him. *Id.*

### **III. The Complainant's Opposition**

In his responses in opposition to the Respondents' motions for summary decision, the Complainant devotes many pages to discussion of case law relating to complaints of employment discrimination and reprisal for protected activity. However, he offered little if any new evidence or factual allegations beyond what was contained in his original complaint to OSHA and his pre-hearing reports. Therefore, I have considered everything filed by the Complainant in this matter as responsive to the Respondents' motions.

#### **A. General Electric**

The Complainant alleges that he was employed by GE's Nuclear Energy Division from 1984 until 1987 as an Engineer performing nuclear safety work. He alleges that he engaged in protected activity while employed by GE and that he also filed discrimination charges with the EEOC, the U.S. Attorney in San Jose, California and the Department of Labor in 1987. Complainant's Pre-hearing Report at 2. In addition, he alleges,

General Electric Company continued to retaliate and discriminate against Seetharaman even after Seetharaman's termination after 1987. They fired all payroll employees in San Jose in response and retaliation in 1987. They offered poor references (to Texas utilities), blacklisted Seetharaman in the Power industry, pulled out employees from the organizations in which Seetharaman worked (after Seetharaman's employment at GE was verified per 10 CFR 50, Appendix B by those organizations in particular Wolf Creek (a subsidiary of past Kansas Gas and Electric) in Wichita, Kansas in 1988 and Commonwealth Edison Company, Chicago in 1989. GE further offered management advice to Commonwealth Edison in 1988 and 1989 and later for reorganizations as a management consultant. They further were nuclear fuel vendor and nuclear services vendor in the 1980s and 1990s and at present for Commonwealth Edison (now Exelon). They used their immense resources and ensured that Seetharaman never survived anywhere in the Power Industry. While at GE in 1985, 1986 Shyam S. Dua, a decision making manager at GE threatened Seetharaman that he would never get anywhere in the industry if he went against GE. Despite Seetharaman filing written complaints internally and externally at GE, in 1987 he never even got a hearing to date on all these matters. As a matter of circumstantial evidence to support blacklisting from 1987 till 2002 today Seetharaman has worked for over six organizations. He has never been promoted even once anywhere, despite his excellent qualifications. In fact in his entire career of 22 years as an Engineer,

Seetharaman has never been promoted anywhere at any organization, consistent with S.S. Dua's threat at GE.

*Id.* The Complainant states that he "intends to demonstrate GE's long standing relationship with Stone & Webster for decades and how decision-making managers Nick Zervos (who worked on several GE toxic substance releasing projects particularly Kalina Cycle), Joe Green and Walter Rhodes who were ex-GE employees, have affected his termination decisions." *Id.* He also charges that GE is "notorious for being ruthless and vindictive and retaliatory" and that GE has been involved with Stone & Webster over the years as a vendor or agent on numerous power plant projects, and he alleges that GE has a long and extensive history of environmental pollution and employment discrimination, all of which he intends to introduce at the hearing to prove that GE discriminated against him in connection with Stone & Webster's May 2002 termination decision. *Id.* at 3-5.

In his response in opposition to GE's motion for summary decision, the Complainant states that he contacted GE's attorney on July 11, 2002 and July 17, 2002, and he cites this contact as additional protected activity. Complainant's Opposition at 2. The Complainant reiterates his allegations that GE has continued to retaliate against him for the past 15 years, culminating in his termination by Stone & Webster in May 2002, and he states that he is alleging a continuing violation against GE which is timely because he filed his complaint within 30 days of the most recent discriminatory conduct, the May 2002 termination. *Id.* at 3-7. He further alleges that GE and the other respondents engaged in an illegal conspiracy with Stone & Webster to violate environmental laws and to fire him for opposing their violations. *Id.* at 7. The Complainant recites a variety of charges against GE's business, employment and environmental practices, and he alleges that he discussed GE's environmental misconduct with the supervisor who terminated his employment at Stone & Webster:

Seetharaman worked on this Lungmen project [a nuclear reactor in Germany on which GE and Stone & Webster both worked] in 2002 and made several whistleblowing protests inside Stone & Webster under 42 USC 5851, and even told the terminating Supervisor Zervos about GE's derelict acts just three weeks before his termination. Zervos did not like these statutorily protected expressions and was inimical to Seetharaman's adverse remarks to GE's past environmental safety violations! Thus Zervos motive, intent, and state of mind are at issue before this Court, along with his long association with GE. Particularly important are how Zervos and GE designed and built a toxic substance ammonia releasing Kalina Cycle Plant for GE in the 90s in New York, where GE has been found guilty of many safety and environmental law violations. Seetharaman specifically talked to Zervos about how a safety relief valve emitting, hot high temperature blowing Ammonia in such a GE plant would be devastating to the safety of plant personnel! Zervos ridiculed Seetharaman for that statutorily protected remark and replied that such a release is "like duck soup", he can catch it, not that it would endanger public safety!

*Id.* at 9-10 (quotation in original). The Complainant also alludes to various business and financial transactions by GE and the other Respondents, including some which occurred after his termination from Stone & Webster, and he asserts that “[a]s part of discovery and trial, Seetharaman should be allowed to ‘follow the money’ since it affected interstate commerce and employment!” *Id.* at 11-12 (quotation marks in original). He asserts that summary judgement should be denied because he has shown that GE played a role in his termination:

At this stage of the litigation, Seetharaman has established that GE has “some percentage responsibility” for flouting the U.S environmental laws and further conspiring with the other defendants in a circumstantial sense, which led to Seetharaman’s loss of employment and blacklisting. They contributed to the harm against Seetharaman, however “divisible” such a harm may be! However legal standards demand that Summary Judgment be denied for GE once there is divisibility of harm, as below!

*Id.* at 13. The Complainant also points out that GE’s misdeeds have even affected him as a consumer:

Further GE maliciously withheld information from the U.S. Government by hiding safety flaws and not reporting them for years (See pre-hearing report and Judge Gans decision!) They engaged in unsafe practices in 1980s by putting in compressors in refrigerators that failed and compromised public safety, and had to be recalled. They did the same with Gas Turbines all over the world, that needed to be recalled. Nuclear Reactors cannot be recalled, (since they are radioactive!), but they are sitting all over the world and within the U.S. filled with safety flaws. Recently Seetharaman purchased a GE Profile Arctica refrigerator from SEARS and at 4 A.M. in the morning heard a loud hissing noise, he put the lights on the dining room and there was water all over the floor and once he opened the refrigerator water flooded out some more! It took two hours and eighteen towels to sap up the water all over the floor, shut the water valve and stop a dangerous condition that threatened the entire house. If this had happened over a weekend when the family was out, or during vacation, the entire house would have been ruined by water damage! The flaw was due to a defective part around the water filter that cracked and failed! Such a company must be tried, not dismissed from the present proceedings by granting summary judgment!

*Id.* at 13. As evidence of the conspiracy among GE, the other Respondents and Stone & Webster, the Complainant alleges,

English Boiler was invited by Stone & Webster and PG&E/NEG (a subsidiary of Pacific Gas & Electric Company) to bid on an on-line internet auction for seven boilers in August/September 2001 and English Boiler engaged in predatory practice by driving down the price of such an auction with complete connivance



from PG&E/NEC (a subsidiary of Pacific Gas & Electric Company) and engaged in unfair trade practices knowingly, that they won't be able to meet the stringent emission standards of the above cited U.S. environmental laws in the on-line boiler auction, by selling "below-cost" and violating provisions of the Sherman Act, Clayton Act and Robinson-Patman Act. This auction affected interstate commerce and Seetharaman evaluated this auction and made engineering recommendations and opposed the unlawful practice in 2001 and 2002! PG&E/NEG engaged in unfair trade practice by deceptively advertising for seven boilers and eventually cancelled the order to one boiler (See Neb. Boiler Scott Hudson Letter of 10-31-2001). They did not re-bid the job, but cut an under-handed deal with Nebraska Boiler – GE funded all this, and after Seetharaman's whistleblowing in 5-24-2002 to the USDOL, in 8-2002 GE withdrew funding from PG&E/NEG.

*Id.* at 6-17. Based on these arguments, the Complainant urges denial of GE's motion since "General Electric is an environmentally derelict Corporation that destroys peoples lives by 'bringing bad things to life' by polluting the environment, compromising public safety, destroying whistleblowers and defying the Government." *Id.* at 18 (quotation marks in original). He concludes his response by stating that he intends to prove at trial that GE does not have integrity and that [former GE CEO] "Jack Welch is not credible, since he refused to take responsibility for polluting the Houstonic river with PCB, and continued to blame the Government and the EPA!" *Id.*

#### B. Pacific Gas & Electric

The Complainant alleges that he worked for PG&E in 1987 as an Engineer through EQC, Inc., and that recently he worked for PG&E/NEG through Stone and Webster in 2001 and 2002, that he engaged in protected activity and also filed discrimination charges with the Department of Labor in 2002, and that he complained in 1987 to the State of California Professional Engineers Board about PG&E's unsafe practices at the Moss Landing Power Plant in Monterey, California. Complainant's Pre-hearing Report at 2. He also states that he intends to introduce the following evidence in support of his complaint against PG&E: (1) as "circumstantial evidence" to support discrimination/reprisal from 2001 until 2002, all environmental law violations of PG&E over the past thirty years; (2) evidence of PG&E's relationship with Stone & Webster for several years and "how decision-making managers Nick Zervos (who worked on several GE toxic substance releasing projects, particularly Kalina Cycle), Joe Green and Walter Rhodes who were ex-GE employees, have affected his termination decisions; and (3) evidence that PG&E "always put money and profits first and put the law and people last and for the bottom." *Id.* The Complainant further alleges that PG&E owns and operates several power plants and that it has been involved with Stone & Webster in the operation, maintenance and service of power plants, thereby making PG&E an agent of Stone & Webster for purposes of his discrimination complaints. *Id.*

In his response in opposition to PG&E's motion, the Complainant alleges that he was "employed by Stone & Webster from 2001-2002 and PG&E paid for the projects Seetharaman

worked on and controlled virtually every engineering aspect of that relationship by approving drawings, methodologies, procedures, etc. and PG&E decision making managers were in constant contact with Stone & Webster, affecting Seetharaman's employment conditions and aspects." Complainant's Opposition at 6. The Complainant alleges that "GE lent money to PG&E and controlled the operation of PG&E/NEG throughout the course of Seetharaman's employment at Stone & Webster and PG&E allocated work to Stone & Webster and controlled their operation and decision makers Walter Rhodes, Nick Zervos, Joe Green, etc. have had [sic] long relationship with GE." *Id.* at 7. Therefore, the Complainant argues that PG&E is "intertwined" with Stone & Webster as an "agent, client, operator". *Id.* at 14.

### C. Exelon

The Complainant alleges that he worked for Exelon's predecessor entity, Commonwealth Edison ("ComEd") from June 1989 until November 1992 as an Engineer performing nuclear safety work. Complainant's Pre-Hearing Report at 2. He states that he engaged in protected activity while employed by ComEd and filed discrimination charges with the EEOC, and he alleges that Exelon has continued to discriminate and retaliate against him since he was terminated in 1992 by "blacklisting" him within the nuclear power industry. *Id.* As "circumstantial evidence" of this alleged blacklisting since 1992, the Complainant states that he has worked for over four organizations since 1992 but has never been promoted, despite his excellent qualifications. *Id.* He further states that he "has never been promoted anywhere at any organization" in the 22 years that he had been employed as an engineer. *Id.* The Complainant further states that at the hearing on his complaint, he "intends to demonstrate Exelon's long standing relationship with Stone & Webster for several years and how decision-making managers Nick Zervos (who worked on several GE toxic substance releasing projects — particularly Kalina Cycle), Joe Green and Walter Rhodes who were ex-GE employees, have affected his termination decisions." *Id.* The Complainant also alleges that Exelon owns several "unsafe" nuclear reactors that were designed and built by GE and that Exelon has been involved with the design, operation, maintenance and service several Boiling Water Reactor ("BWR") nuclear stations with GE as a vendor or agent and with Stone & Webster for common projects in the United States and other countries. *Id.* at 2-3. He alleges that Exelon canceled a contract with Stone & Webster for the PBMR reactor plant in April 2002 to retaliate against him, and he noted that Exelon fired Stone & Webster as a contractor in the late 1980s and early 1990s for "Low-Quality-Unsafe" engineering work, only to rehire Stone & Webster in the mid-1990s. *Id.* at 3. He cites alleged design flaws and safety violations at a number of nuclear power projects and alleges that GE, Exelon and Stone & Webster are all implicated by their intertwined business relationships. *Id.* Finally, the Complainant states that he also intends to introduce evidence of civil rights suits to which Exelon was a party over the past forty years and as well as evidence of the "relationship" between Exelon's current president and a former MWRA Director. *Id.* at 4.

In his response in opposition to Exelon's motion, the Complainant states that he "worked on the Lungmen project in 2002 and made several whistleblowing protests inside Stone & Webster and even told the terminating supervisor Zervos about GE's derelict acts just three

weeks before his termination. Zervos was also told of GE's violations at Commonwealth Edison (now Exelon) and he was aware that Seetharaman was a past employee of both the companies and has scrutinized Seetharaman's resume along with his superior Joe Green." Complainant's Opposition at 9. The Complainant also alleges that "Exelon allocated lot[s] of work to Stone & Webster in the nuclear arena" and that "GE, Exelon, PG&E, and MWRA jointly controlled Stone & Webster . . . ." *Id.* at 11. Complainant then argues that Exelon "has some percentage responsibility for flouting the U.S. environmental laws and further conspiring with the other defendants in a circumstantial sense, which led to Seetharaman's loss of employment and blacklisting." *Id.*

#### D. MWRA

The Complainant states that he "engaged in statutorily protected activity against MWRA from 1995 till [sic] present and filed specific charges against them internally at MWRA and externally in 1995, 1999, and 2002 with the U.S. federal entities." Complainant's Opposition at 5. He alleges that the "MWRA was definitely aware of these activities and they took several adverse actions against Seetharaman over the past 6+ years and these actions were taken for the purpose of retaliating and the circumstances at present via Stone & Webster also lead to an inference of retaliation and conspiracy." *Id.* He further alleges that at the "Deer Island facility virtually every employee (contractors inclusive) knew of Seetharaman's protected activities from . . . and some of these ex-employees and contractors moved to work for Stone & Webster . . . [and i]f any of them told Stone & Webster management anything about these protected activities are [sic] also material to these proceedings." *Id.* at 17. The Complainant contends that MWRA is an agent of Stone & Webster because MWRA has repeatedly used Stone & Webster as a contractor, and he argues that MWRA "has some percentage responsibility for flouting the U.S. environmental laws and further conspiring with the other defendants in a circumstantial sense, which led to Seetharaman's loss of employment and blacklisting." *Id.* at 6, 10.

#### E. Mitsubishi

The Complainant alleges that he worked with Mitsubishi Power Systems/Mitsubishi Heavy Industries during 2001 and 2002 as an engineer through Stone & Webster. He states that he engaged in protected activity during this time frame and also filed the discrimination charges which are the subject of this case. To support his allegations that Mitsubishi discriminated against him, the Complainant states that he intends to introduce "[a]s a matter of circumstantial evidence . . . all environmental law violations of Mitsubishi Power Systems/Mitsubishi Heavy Industries/Mitsubishi, over the past thirty years, particularly Mitsubishi recent trial/settlement on 6-4-2002 in Taipei for LNG gas tank leaks (a serious safety issue!)." Complainant's Pre-hearing Report at 2. The Complainant also states that at the hearing, he "intends to demonstrate Mitsubishi Power Systems/Mitsubishi Heavy Industries/Mitsubishi['s] relationship with Stone & Webster for several years and how decision-making managers Nick Zervos (who worked on several GE toxic substance releasing projects — particularly Kalina Cycle), Joe Green and Walter Rhodes who were ex-GE employees, have affected his termination decisions." *Id.* The

Complainant alleges that Mitsubishi manufactures, owns, operates, and services several nuclear power plant systems, that it has approved unsafe designs, that he has personally worked with Mitsubishi engineers, and that Mitsubishi “is involved as an ‘agent, vendor, servicing entity and operator’ in this complex matter with Stone & Webster [and] the word ‘agent/employee’ applies to them as well and imputes ‘discovery’ and trial against them.” *Id.* at 3 (quotation marks in original). Lastly, he alleges that Mitsubishi was invited by Stone & Webster and PG&E/NEG to bid on several power plants and systems between 2000 and 2002 and that “Mitsubishi . . . engaged in unfair trade practices by deliberately flouting U.S. environmental Laws with complete connivance from PG&E/NEG . . . and Stone & Webster, knowingly, that they won’t be able to meet the stringent emission standards of the above cited environmental laws in the plant operations in Covert, Badger and Goose Lake facilities.” *Id.* at 4.

In his response in opposition to Mitsubishi’s motion for summary decision, the Complainant repeats his allegation that Mitsubishi “continually violated U.S. environmental and OSHA laws by conniving with Stone & Webster on the Covert, Badger, Goose Lake projects, in which Seetharaman actively participated” until February 2002. Complainant’s Opposition at 5. He alleges that he “engaged in statutorily protected activity against Mitsubishi Corporation and Stone & Webster specifically in front of Mitsubishi and Stone & Webster employees” from March 2001 through February 2002, and he asserts that “Mitsubishi is tied in as an agent of Stone & Webster, since Stone & Webster paid Mitsubishi by taking money from PG&E/NEG and GE and together they all conspired to violate environmental laws on the projects Seetharaman worked on, and they all have past history of flouting U.S. environmental laws.” *Id.* at 5, 6.

#### F. Nebraska Boiler

The Complainant states that he worked with Nebraska Boiler Company for PG&E projects through Stone & Webster during 2001 and 2002 when he engaged in protected activity and filed the complaints in this matter. Complainant’s Pre-hearing Report at 2. He states that he intends to introduce “[a]s a matter of circumstantial evidence . . . all environmental law violations of Nebraska Boiler Company over the past thirty years” and that he “intends to demonstrate Nebraska Boiler Company[’s] relationship with Stone & Webster [and] PG&E/NEG for several years and how decision-making managers Nick Zervos (who worked on several GE toxic substance releasing projects — particularly Kalina Cycle), Joe Green and Walter Rhodes who were ex-GE employees, have affected his termination decisions.” *Id.* He alleges that Nebraska Boiler Company owns, manufactures, operates and services power and process plant boilers, that he personally worked with Nebraska Boiler Engineers while he was employed by Stone & Webster and that “Stone & Webster’s unsafe design practices automatically implicate Nebraska Boiler Company, since the Covert, Badger, Goose Lake Power Stations, where such violations actually occurred involves Nebraska Boiler Company’s steam generation boilers and equipment at power plants in Michigan, Wisconsin, and Illinois.” *Id.* at 2-3. He additionally alleges that Nebraska Boiler was invited by Stone & Webster and PG&E to participate in internet auction for seven boilers during August and September 2001, that English Boiler engaged in predatory practices by driving down price during the auction “with complete connivance from PG&E/NEG

and engaged in unfair trade practices, knowingly, that they won't be able to meet the stringent emission standards of the above cited environmental laws in the on-line boiler auction, by selling 'below-cost' and violating provisions of the Sherman Act, Clayton Act and Robinson-Patman Act) and Nebraska Boiler Company won the auction and had no intention of meeting the environmental permits either, but bid low to get the order." *Id.* at 3 (quotation marks in original).

The Complainant also alleges that Nebraska Boiler sold boilers to Stone & Webster and that Stone & Webster transferred the boiler work from him to another engineer in early 2002 when he voiced concerns that the boilers did not meet the standards required by certain environmental laws. Complainant's Response to Motion for Summary Decision at 5. The Complainant argues that Nebraska Boiler's business contact with Stone & Webster requires Nebraska Boiler to be deemed an agent of Stone & Webster, and that an inference should be drawn that Nebraska Boiler in some way influenced Stone & Webster's decision to remove the boiler work and terminate his employment. *Id.*

In his response in opposition to Nebraska Boiler's motion, the Complainant states that he filed charges against Nebraska Boiler within Stone & Webster in or around September 2001 that Nebraska Boiler "broke the environmental laws and wouldn't meet the permits and were selling boilers that would emit the carcinogenic and toxic formaldehyde gas in excess of what is permitted by the law." Complainant's Opposition at 5. He alleges that Nebraska Boiler was "aware of these protests all along in 2001 and 2002 and they continued to retaliate in 2001/2002 by forcefully transferring the boiler work from Seetharaman to another engineer (because Seetharaman would not award the job to Nebraska Boiler since they broke the environmental laws) . . . ." *Id.* at 5. As with the other Respondents, the Complainant argues that Nebraska Boiler "has some percentage responsibility for flouting the U.S. environmental laws and further conspiring with the other defendants in a circumstantial sense, which led to Seetharaman's transfer, loss of employment and blacklisting." *Id.* at 11.

#### G. English Boiler

The Complainant alleges that he worked with English Boiler for PG&E projects through Stone & Webster during 2001 and 2002 when he engaged in protected activity and filed the complaints in this matter. Complainant's Pre-hearing Report at 2. To support his allegations that English Boiler discriminated against him, the Complainant states that he intends to offer as "circumstantial evidence . . . all environmental law violations of English Boiler . . . over the past thirty years" and to "demonstrate English Boiler[']s . . . relationship with Stone & Webster [and] PG&E/NEG for several years and how decision-making managers Nick Zervos (who worked on several GE toxic substance releasing projects — particularly Kalina Cycle), Joe Green and Walter Rhodes who were ex-GE employees, have affected his termination decisions." *Id.* at 2. He further alleges that English Boiler owns, manufactures, operates and services power and process plant boilers, that it has been involved through PG&E and Stone & Webster in the operation, maintenance and service of power plants in California, Michigan and other states. *Id.* He states that he was associated with employees of English Boiler while he was working for Stone &

Webster, and he contends that English Boiler should be deemed an agent of Stone & Webster for purposes of his discrimination complaint based on their business relationships. *Id.* He also repeats his allegation, discussed above, that English Boiler engaged in unfair and deceptive trade practices. *Id.* at 3; Complainant's Opposition at 4.

In his response in opposition to English Boiler's motion, the Complainant alleges that before the auction took place "English Boiler personally called Seetharaman and told him that they won't be able to even enter the auction since the starting bid price of about \$5.8 million is well below their cost and there was no way they could make money . . . This auction affected interstate commerce and Seetharaman evaluated this auction and made engineering recommendations and opposed the unlawful practices in 2001-2002." Complainant's Opposition at 4. The Complainant argues that he should be afforded an opportunity to "prove that the boiler vendors had no intent of meeting the environmental laws and Seetharaman was the only individual protesting these shenanigans and was eventually retaliated against." *Id.* He also argues that English Boiler "is an agent of PG&E/NEG and Stone & Webster and those two continually violated environmental laws and compromised public safety and continually violated Seetharaman's rights" from 2001 until the present time, and he concludes that "the circumstances at present in 2002 via Stone & Webster lead to an inference of retaliation and conspiracy." *Id.* at 3, 6.

#### **IV. Discussion, Findings of Fact and Conclusions of Law**

Under the Rules for Practice and Procedure for Administrative Hearings, any party may "move with or without supporting affidavits for a summary decision on all or any part of the proceeding." 29 C.F.R. §18.40(a). A party opposing the motion may not rest on the mere allegations or denials of the motion but must "set forth specific facts showing that there is a genuine issue of fact for the hearing." 29 C.F.R. §18.40(c). An administrative law judge "may enter summary judgment for either party if . . . there is no genuine issue as to any material fact and [the] party is entitled to summary decision." 29 C.F.R. §18.40(d). In evaluating a motion for summary decision, "the judge does not weigh the evidence or determine the truth of the matters asserted, but only determines whether there is a genuine issue for trial . . . If the slightest doubt remains as to the facts, the ALJ must deny the motion for summary decision." *Stauffer v. Wal-Mart Stores, Inc.*, USDOL/OALJ Reporter (HTML), ARB No. 99-107, OALJ No. 1999-STA-21 at 6 (ARB November 30, 1999), citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1985).

In determining whether a genuine issue of material fact exists, the evidence and factual inferences must be viewed in the light most favorable to the non-moving party. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986); *Udo v. Tomes*, 54 F.3d 9, 12 (1st Cir.1995). Moreover, in a discrimination case where a complainant makes out a *prima facie* case and the issue becomes whether an employer's stated nondiscriminatory reason is a pretext for discrimination, courts must be particularly cautious about granting a motion for summary judgment. *Hodgens v. General Dynamics Corp.*, 144 F.3d 151, 167 (1st Cir. 1998);

*Stepanischen v. Merchants Despatch Transp. Corp.*, 722 F.2d 922, 928 (1st Cir.1983). On the other hand, if the non-movant “fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial,” there is no genuine issue of material fact and the moving party is entitled to summary judgment. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-323 (1986). Since the Complainant has not alleged that he was an employee of any of the seven Respondents at the time that his employment was terminated in May 2002, he is required to prove that each of the named Respondents “act[ed] as an employer with regard to the complainant . . . by exercising control over production of the work product or by establishing, modifying or interfering with the terms, conditions, or privileges of employment.” *Stephenson v. NASA*, USDOL/OALJ Reporter (HTML) ARB No. 98-025, ALJ No. 1994-TSC-5 at 11 (ARB July 18, 2000). *See also Williams v. Lockheed Martin Energy Systems, Inc.*, USDOL/OALJ (HTML), ARB No. 98-059, ALJ No. 1995-CAA-10 at 9 (ARB Jan. 31, 2001) (*Williams*).

Although the Complainant alleges that some of the Respondent’s paid Stone & Webster for the work that he performed and that PG&E controlled every “engineering aspect” of the work performed by Stone & Webster, he has alleged no facts which directly or circumstantially suggest that any of the seven Respondents had any influence or control over any of the terms and conditions of his employment at Stone & Webster, including the decision to terminate his employment in May 2002. That is, he has not alleged or presented any evidence that any of Respondents employed him or had a contract with him, managed or supervised him or his work, had any right to assign work to him, paid either his salary or his benefits, withheld taxes from his pay, evaluated his performance, or had the authority to terminate his employment. *See Williams*, ALJ No. 1995-CAA-10 at 11.

As discussed above, the Complainant does allege that he formerly was employed by three of the Respondents (namely, GE, Exelon’s predecessor, ComEd, and the MWRA), that he engaged in protected activity during these former employments, that a GE manager threatened him in 1985 or 1986, that all of the Respondents have complex and intertwined business relationships with Stone and Webster, that he had contact with the employees of some of the Respondents during his employment with Stone & Webster, that all of the Respondents have violated environmental, employment and/or fair trade laws, that all of the Respondents, individually and in concert with each other and Stone & Webster, have designed, manufactured, sold and serviced unsafe and defective power plant components and other products, and that the manager at Stone & Webster who terminated his employment did not like the Complainant’s criticism of GE and ridiculed the Complainant’s protected concerns about nuclear plant safety. He further alleges that he has been “blacklisted” within the nuclear power industry by the three Respondents which formerly employed him, and as evidence of this blacklisting, he cites the fact that he has never been once promoted by any of the six employers who hired him subsequent to his termination by GE in 1987.

Contrary to the Complainant’s suggestion, I find that it is not reasonable to infer from these alleged facts that the Respondents engaged in unlawful retaliatory conduct in connection

with his termination by Stone & Webster where his own evidence shows that he has been able to repeatedly secure employment, including jobs in the nuclear power industry, over the course of the past 15 years following his alleged discriminatory termination from GE. Moreover, the Complainant's evidence shows that he last worked for GE and PG&E in 1987 and for ComEd in 1992. Although circumstantial evidence may be enough to avoid summary judgement in cases where there is a close temporal relationship between events, "there must be something more than a few weak inferences to create reasonable proof of a link between events so widely separated in time." *Mesnick v. General Electric Corp.*, 950 F.2d 816, 828 (1st Cir. 1991) (*Mesnick*); *Oliver v. Digital Equip. Corp.*, 846 F.2d 103, 110-11 (1st Cir.1988) (while a showing of employment discharge "soon after" protected activity may be strongly suggestive of a causal connection, a longer period of time does not lend itself to such an inference). The Complainant was never employed by Mitsubishi, Nebraska Boiler or English Boiler, and he has alleged no facts from which an inference of retaliatory motivation can be drawn. And, while he did have a recent employment relationship with the MWRA, his speculation that MWRA must have influenced Stone & Webster's termination decision is completely undercut by his evidence that he was hired by Stone & Webster after MWRA responded to an employment verification. Finally, his claim that GE, PG&E, Exelon and MWRA all jointly controlled Stone & Webster is totally unsupported by any factual allegations creating a genuine issue for trial. In sum, I find that the Complainant has offered nothing more than "conclusory allegations, improbable inferences, and unsupported speculation" which is insufficient to avoid summary judgement even in a case where discriminatory intent is an issue. *Smith v. Stratus Computer, Inc.*, 40 F.3d 11, 12 (1st Cir.1994). See also *Hasan v. Burns & Roe Enterprises, Inc.*, USDOL/OALJ Reporter (HTML), ARB No. 00-080, ALJ No. 2000-ERA-6 at 6 (ARB Jan. 30, 2001) (to defeat a motion for summary judgment, the non-moving party must establish that there is a genuine issue of material fact and must do so through some means other than mere speculation or conjecture), *appeal docketed*, No. 01-1322 (3rd Cir. April 27, 2001).<sup>3</sup>

After carefully reviewing all of the Complainant's factual allegations in a light most favorable to him, I conclude that the Complainant has failed to make a showing that is sufficient to establish that any of the Respondents took any adverse action with respect to his employment at Stone & Webster. Having determined that the Complainant has not alleged facts sufficient to establish that the Respondents engaged in any retaliatory conduct under the employee protection provisions, I conclude that there is no genuine issue of material fact for hearing with respect to this essential element of a *prima facie* case and that the Respondents are, therefore, entitled to summary decision dismissing the instant complaint.

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<sup>3</sup> The Complainant was cautioned at the pre-hearing conference that more would be required to create a genuine issue of material fact warranting a hearing: "[Y]ou do have to have, I believe at a minimum, some evidence, at least an allegation, that they retaliated against you because you have exercised rights protected under the law. Not just that they polluted the environment and built a bad power plant and put PCB's in the river." Pre-Hearing Conf. Tr. at 28.



## **V. Order**

The Respondents' motions for summary decision are granted and the complaints filed against them are dismissed with prejudice.

**SO ORDERED.**

**A**

**DANIEL F. SUTTON**  
Administrative Law Judge

Boston, Massachusetts  
DFS:cmm

**NOTICE:** This Recommended Decision and Order will automatically become the final order of the Secretary unless, pursuant to 29 C.F.R. §24.8, a petition for review is timely filed with the Administrative Review Board, United States Department of Labor, Room S-4309, Frances Perkins Building, 200 Constitution Avenue, NW, Washington, DC 20210. Such a petition for review must be received by the Administrative Review Board within ten business days of the date of this Recommended Decision and Order, and shall be served on all parties and on the Chief Administrative Law Judge. 29 C.F.R. §§ 24.8 and 24.9, as amended by 63 Fed. Reg. 6614 (1998).